



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

### PIEDMONT REGIONAL OFFICE

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**J. W. Fergusson and Sons, LLC**  
**Registration No. 50224**

#### **SECTION A: Purpose**

This is a Consent Order issued under the Authority of Va. Code § 10.1-1309 and 10.1-1316 between the State Air Pollution Control Board and J. W. Fergusson and Sons, LLC, for the purpose of resolving certain alleged violations of environmental laws and regulations and to provide for the payment of civil charges.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code § 10.1-1301 and 10.1-1184.
3. "Department" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "HAPs" means Hazardous Air Pollutants as defined in §112(b) of the Clean Air Act.
6. "Order" means this document, also known as a Consent Order and Appendices A and B hereto.
7. "Regulations" mean the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, 9 VAC 5-10-10 *et seq.*

8. "J. W. Fergusson" means J. W. Fergusson and Sons, LLC certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
9. "Facility" means the J. W. Fergusson and Sons, LLC site located at 4107 Castlewood Rd, Richmond, Virginia.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Permit" means the Virginia Title V Operating Permit issued to J. W. Fergusson on May 27, 2003.

#### **SECTION C: Findings of Facts and Conclusions of Law**

1. J. W. Fergusson operates a rotogravure printing facility located at 4107 Castlewood Rd, Richmond, Virginia (NAICS Code 323111). This facility is the subject of the Title V Operating Permit issued on May 27, 2003.
2. On March 29, 30 and 31<sup>st</sup>, 2005 air compliance inspections were performed at J. W. Fergusson. As a result of the inspection, Department staff believes the facility to be out of compliance with certain requirements of 40 CFR 63 Subpart KK and four Permit conditions. In particular, J.W. Fergusson failed to certify and conduct relative accuracy audits on new monitors; failed to maintain monitoring equipment; and failed to properly train personnel in violation of MACT requirements and the facility's Title V permit.
3. On May 31, 2005, PRO issued a Notice of Violation to Fergusson alleging potential violations of 40 CFR 63.828 (a) (2) (i) and Conditions V.B.6, X.B.4, XIII.E.O. and V.B.3 of the Title V Operating Permit.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1307.D, 10.1-1184 and §10.1-1316.C, orders J. W. Ferguson and J. W. Ferguson agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders and J. W. Ferguson voluntarily agrees to pay a civil charge of \$22,200 in settlement of the violations cited in this Order.

1. \$19,200.00 of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment shall include J. W. Ferguson's Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. \$3,000.00 of this civil charge shall be satisfied upon completion by J. W. Ferguson of a Supplemental Environmental Project (SEP) pursuant to Virginia Code 10.1-1186.2 as described in Appendix B of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of J. W. Fergusson, for good cause shown by J. W. Fergusson, or on its own motion after notice and opportunity to be heard.
2. This Order addresses those alleged violations specifically identified herein including those matters addressed in the Notice of Violation issued to J. W. Fergusson on May 31, 2005 or identified by the Department as a result of inspections or requests for information or documents as of the date of this Order. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order and subsequent actions to enforce this Order, J. W. Fergusson admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein.
4. J. W. Fergusson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. J. W. Fergusson declares it has received fair and due process under the Administrative Process Act, Code 2.2-4000 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to

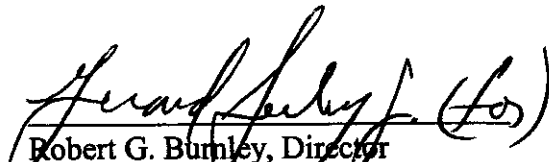
judicial review of, any action taken by the Board to enforce this Order.

6. Failure by J. W. Fergusson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. J. W. Fergusson shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. J. W. Fergusson must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. J. W. Fergusson shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.Failure to so notify the Regional Director within 24 business hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and J. W. Fergusson.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to J. W. Fergusson. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve J. W. Fergusson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement other wise applicable.

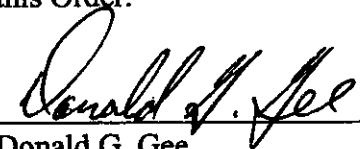
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12. By its signature below, J. W. Fergusson Incorporated voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of OCTOBER 31, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

J.W. Fergusson voluntarily agrees to the issuance of this Order.

By:   
Donald G. Gee  
Director of Manufacturing

Date: 10/24/05

**Commonwealth of Virginia**

City/County of Henrico

The foregoing document was signed and acknowledged before me this 24 day of

October, 2005, by Donald G. Gee, who is Director of Manufacturing of J.W. Fergusson, on behalf of the Corporation.

  
Notary Public

My commission expires: My Commission Expires November 30, 2006

Appendix A.

J. W. Fergusson shall:

1. Conduct and pass 60 days from the effective date of this Order a Relative Accuracy Test Audit on the CEMS used to measure reduction efficiency on the Solvent Recovery System in accordance with 40 CFR 63.828(a)(2)(i).
2. Provide training to facility personnel on the calibration, operation and maintenance of the CEMS system installed on the Solvent Recovery unit 30 days from the effective date of this Order. Revise the facility's operation and maintenance plan for the air pollution control systems within 45 days of the effective date of this Order and submit for review and approval by the Department.
3. Develop and implement a comprehensive QA/QC plan, including applicable provisions of Performance Specifications 2 and 8, in accordance with 40 CFR 60 Appendix F for the CEMS system installed on the Solvent Recovery unit within 45 days of the effective date of this Order and submit the plan for review and approval by the Department.

Appendix B  
Supplemental Environmental Project

1. The Supplemental Environmental Project to be performed by J. W. Fergusson shall be to install an automated alarm system, which will alert the facility personnel in the event that the facility's data logger system is either: 1) not recording data from either the pressure differential monitor, solvent recovery CEMs, or air flow monitor; or 2) obtaining data which indicates potential non-compliance with permit conditions. After the initial warning, the system will then automatically shut-down the four printing presses (Press Nos. 3, 4, 5, and 6) connected to the solvent recovery system in the event the potential non-compliance situation is not corrected in order to prevent further operation of the presses until the situation is corrected. The automated alarm system shall be installed and operational within 60 days of the effective date of this Order. J. W. Fergusson shall send certification of installation and operation upon completion.
2. In the event that J. W. Fergusson publicizes the SEP or the results of the SEP, J. W. Fergusson shall state in a prominent manner the project is part of a settlement for an enforcement action.
3. The Department has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.
4. Pursuant to this Order communications regarding this Order and its requirements shall be addressed as follows:

Charles Turner  
Department of environmental Quality  
Piedmont regional Office  
4949-A Cox Road  
Glen Allen, VA 23060

